

## REMARKS

### **Amendment of the Claims and Claim Status**

Claims 1-83 are pending in this application. Of these, Claims 22-25, 27-33, 35-39, 43-47, and 49-74 are withdrawn from consideration and Claims 1-21, 26, 34, 40-42, 48, and 75-83 are under consideration.

### **Provisional Double Patenting Rejection**

Claims 1-21, 26, 34, 40-42, 48, and 75-83 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting (“ODP”) over claims 1-46 of application no. 10/957,540 (filed September 30, 2004) and claims 1-75 of application no. 10/954,691 (filed September 29, 2004).

To reiterate our position in the April 5th, 2006 response, Applicants wish to direct the Examiner’s attention once again to MPEP 804 I.B. Noting the respective filing dates of 10/957,540 and 10/954,691, the present application, filed on November 18, 2003, is clearly the earlier filed of the three applications at issue. This fact having been established, all the scenarios illustrated in MPEP 804 I.B. 1. take the same approach towards an earlier-filed application: where the provisional nonstatutory ODP rejection is the only rejection remaining in the earlier-filed application, “the examiner should withdraw (the) rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” In light of this explicit guidance from the MPEP, no terminal disclaimer is necessary for the allowance and issuance of the present application.

In further support of the Applicants’ position, Applicants rely on the knowledge and expertise of Supervising Patent Examiner Glenn Caldarola. Applicants would like to thank Examiner Caldarola for an enlightening and courteous telephone interview on September 19, 2006. Examiner Caldarola assessed the current situation and concluded: “based on guidance from the MPEP, this application can proceed (to issuance) without the filing of a TD (terminal disclaimer).”

In view of the foregoing, it is believed that all claims now pending in this Application are in condition for allowance. Should the Examiner have any continuing objections, the Applicant


Brian S. APPEL et al.  
Application No. 10/717,076  
Page 3

respectfully asks the Examiner to contact the undersigned at 415-442-1490 (direct line) in order to expedite allowance of the case. Authorization is granted to charge any outstanding fees due at this time for the continued prosecution of this matter to Morgan, Lewis & Bockius, LLP Deposit Account No. 50-0310 (matter no. 061136-0011-US).

Respectfully submitted,

Date: October 18, 2006

By: \_\_\_\_\_

  
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